

September 12, 2008

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-2947

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In Regard to the Matter of:  
Bayside State Prison  
Litigation

LAWRENCE BROWN,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

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\* \* \* \* \*  
FRIDAY, SEPTEMBER 12, 2008  
\* \* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.  
Certified Court Reporting & Videoconferencing  
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10 A P P E A R A N C E S:

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Transcript of proceedings in the above  
matter taken by Theresa O. Mastroianni, Certified  
Court Reporter, license number 30X100085700, and  
Notary Public of the State of New Jersey at the  
United States District Court House, One Gerry Plaza,  
Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: I'm ready to deliver  
2 three decisions today. We'll reopen first the matter  
3 of Lawrence Brown, his case was heard on the 19th of  
4 June and the docket number is 08-2947.

5 This opinion/report is being issued  
6 pursuant to the directives of the Order of Reference  
7 to a Special Master and the Special Master's  
8 Agreement and the guiding principles of law which  
9 underlie this decision to be applied to the facts  
10 upon which it is based as set forth in the jury  
11 instructions in the Walker and Mejias jury charges to  
12 the extent applicable to the allegations in Mr.  
13 Brown's case.

14 As finalized after review under Local  
15 Civil Rule 52.1, transcript of this oral opinion will  
16 constitute the written report required by paragraph  
17 seven of the Order of Reference to a Special Master.

18 Mr. Brown arrived at Bayside  
19 approximately on the 23rd of September of 1997 just  
20 to kind of set the context. The SOG unit was no  
21 longer in place by then. At one point he recounted  
22 that the event occurred approximately a week after  
23 Officer Baker's death. This, however, of course, is  
24 not possible, could not be accurate. He's off by  
25 several weeks, but that's not particularly

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1 significant in my determination here.

2 He's asked on page eight beginning at  
3 line 12: "Where were you before you were brought to  
4 Bayside?"

5 And his answer is: "Garden State Youth  
6 Correctional Facility.

7 "And what was the reason why you were  
8 transferred as far as you understood from Garden  
9 State to Bayside?

10 "I got into a fight and they gave me  
11 detention time, ad-seg.

12 "When you came to Bayside, to what unit  
13 were you taken?

14 "Answer Baker Unit, B Unit."

15 Then he was asked to describe an  
16 incident with corrections officers and he does so as  
17 follows, beginning at page nine, line 11: "All  
18 right. And when you had this problem with the  
19 corrections officers, where were you physically  
20 located, in what unit?

21 "Baker Unit, B Unit.

22 In or near your cell?

23 "Yes.

24 "And do you know the names of the  
25 officers that you had this problem with?

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1 "No.

2 "And how many days had you been at  
3 Bayside at the time you had this difficulty?

4 "It was as soon as I got there.

5 "Question: And tell Judge Bissell what  
6 happened to you.

7 "They brought us in from Garden State  
8 Youth Correctional Facility. When I got there one of  
9 the officers asked me what I was there for and I  
10 didn't answer him. The other officer told him I was  
11 there for beating up a white guy. They gave me an  
12 assault charge. So they got in the cell, they were  
13 both standing outside the cell and they went in there  
14 and they just pretty much proceeded to rough me up,  
15 smack me around, punch me in the stomach and that's  
16 when I hit my shoulder on the bed. The whole time  
17 I'm in handcuffs.

18 "You were hit in the stomach?

19 "Yes.

20 "With what? With a fist, with a club,  
21 what is it that hit you?

22 "With his fist.

23 "And then what happened to your  
24 shoulder?

25 "I banged it up against the edge of the

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1 bed.

2 "How did you do that?

3 "Because he punched me and I had my

4 hands cuffed behind me.

5 "How did you bang your shoulder after

6 getting a punch in the stomach?

7 "I doubled over."

8 Continuing. "And you struck a piece of

9 the bed?

10 "Yes, the edge of the bed between the

11 joint and my shoulder.

12 "All right. Now, did you actually seek

13 to go to the infirmary for any injuries?

14 "I asked them, but they wouldn't let

15 nobody could go to the infirmary. Eventually the

16 nurse came around.

17 "All right. Now, today, do you have

18 any lasting effect of anything that happened to you

19 there?

20 "Yeah, every now and then my shoulder

21 gets sore, but it clicks most of the time. There is

22 something wrong with the rotator cuff.

23 "Is that from -- you think that's from

24 hitting that piece of furniture, the bed?

25 "Yeah, I know its from that. I didn't

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1 have it.

2 "You didn't have that problem before?

3 "No."

4 Further testimony on the subject

5 commences at page 16, line 19. Speaking, by the way,

6 of the person who was in the cell at the time he

7 arrived. "No, they handcuffed him, brought him out

8 of the cell, set him outside the cell, but he's still

9 up against the wall and brought me into the cell. I

10 was already handcuffed.

11 "So you were already handcuffed? How

12 many guards were there?

13 "About two or three.

14 "Okay. Now, you were in prison for

15 several years before this incident occurred, right,

16 or at least three, four years?

17 "Yes.

18 "Prison guards wear name tags; is that

19 correct?

20 "Most of the time.

21 "So the prison guards that beat you up,

22 were they wearing name tags?

23 "Not that I could see, no.

24 "Do you know whether or not they were

25 SOG officers and do you know what I mean by SOG?

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1 "I know what the SOGs are, yes.

2 "Were they SOG officers?

3 "I suppose so. They didn't have any  
4 name tags on.

5 "Do you believe them to be SOG officers  
6 because they didn't have name tags on; is that  
7 correct?

8 Answer: Yes.

9 "Okay. Now, were there any officers  
10 there that had name tags on?

11 "I don't recall.

12 "Okay. And after they handcuffed you,  
13 it was just the two officers, correct?

14 "There was two or three, yeah.

15 "Two or three. So two or three  
16 officers bring you to the cell, they take your cell  
17 mate out and now they put you in the cell; is that  
18 correct?

19 "Answer: Yes.

20

21 And you're still handcuffed?

22 "Yes.

23 "Did they shut the door or did they  
24 leave the cell and shut the door before they began to  
25 beat you or were they in there the entire time?



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1 "They put me in the cell and they came  
2 in behind.

3 "And, again, your cell mate is just  
4 standing out in the hallway?

5 "In the hallway.

6 "Okay. So how many officers come in?

7 "At the time, two.

8 "Okay. And somebody punched you in  
9 your stomach, right:

10 "Yes.

11 "How many times were you punched?

12 "I got hit one time in my stomach.

13 "And as a result of that punch, did you  
14 sustain injury to your stomach?

15 "No, my stomach was sore, but the  
16 injury was to my shoulder.

17 "As I understand, you claim you banged  
18 your shoulder on the bed; is that correct?

19 "Yes.

20 "Okay. Other than the one punch to  
21 your stomach, did any guard do anything else to you?

22 "Smacked me upside of my head.

23 "Okay. What did they use to smack you  
24 upside your head?

25 "It was a hand, like a regular smack.

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1 "An open hand?

2 "An open hand.

3 "Okay. You didn't sustain any injury  
4 from that?

5 "No, not that I recall, no.

6 "Okay. Now, you indicated you're  
7 presently at Riverfront on a four-year sentence; is  
8 that correct?

9 "Answer: Yes.

10 "Back at the time of this alleged  
11 assault, you were in jail for a 20-year sentence; is  
12 that correct?

13 "Answer: Yes.

14 And you had been charged with murder;  
15 is that correct?

16 "Answer: Aggravated manslaughter,  
17 yes."

18 I find that the testimony presented by  
19 Mr. Brown is essentially accurate and credible. He  
20 was uncertain as to whether they were SOG officers,  
21 we now know that they were not. This testimony, of  
22 course, came after a lengthy passage of time and I  
23 don't consider it either incredible or fabricated in  
24 connection with the statements about his ability to  
25 identify the officers involved.

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1 I find, based upon the facts and  
2 circumstances, in particular the date, that we're  
3 dealing here with housing officers in B Unit which  
4 was the detention unit for problem prisoners at this  
5 time. And, of course, he was there as we all know as  
6 a result of the fight that he had gotten into at  
7 Garden State.

8 The officers who confronted him, of  
9 course, were the officers at that unit. Once again,  
10 the unit of a relatively high security level as far  
11 as the prison is concerned.

12 As in many of the cases that come  
13 before me, one looks for indicia as to whether what's  
14 recounted here, particularly by the inmate in this  
15 case, makes any inherent sense. And I find that it  
16 does. Here is a man transferred in here on an  
17 extensive charge for aggravated manslaughter from  
18 having been involved in a fight with another inmate  
19 in another institution. It makes very good sense  
20 that the corrections officers who would be overseeing  
21 his status in B Unit for problem prisoners would  
22 decide that they were going to assert their authority  
23 right up front. And this fellow might or might not  
24 think he was a tough guy, but they were going to take  
25 care of that in a hurry.

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1                   Now, if all we're dealing with here was  
2   a punch in the stomach just to let him know that they  
3   weren't going to take anything from him, and a slap  
4   on the side of the head for the same type of purpose,  
5   we might be thinking in terms of a little bit about  
6   either de minimis conduct or de minimis injury. What  
7   happened here, and once again it certainly makes  
8   inherent sense given the description of the layout  
9   and rather small size of the cell, is that as a  
10   consequence of this punch to the stomach while he was  
11   handcuffed behind him, he doubled over and banged his  
12   shoulder against a sharp point on one of the beds.  
13   And this, of course, led to the consequential injury  
14   that at least as of the present appears to be  
15   permanent. It's not a tremendous amount of ongoing  
16   pain, but it happens from time to time and a clicking  
17   or other types of mechanical difficulties in the  
18   shoulder are readily understandable.

19                   Under the circumstances here I make a  
20   finding that excessive and unnecessary force here was  
21   employed for the purpose of these officers delivering  
22   a message that they weren't going to take any  
23   problems from any tough guys in this unit and that  
24   they were in charge. I find its credible that they  
25   backed his cellmate out of the room, one, to enhance

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1 their own security, but secondly, because of the fact  
2 they they were in very close quarters in there. 1  
3 determined, therefore, that this was the use of  
4 excessive force for the purpose of inflicting some  
5 measure of punishment or at least a significant  
6 warning as to what lay ahead for this man if he ever  
7 crossed the line.

8           Once again, excessive, unnecessary,  
9 bordering on the sadistic, at least, and hence well  
10 within the definition of excessive force as found in  
11 the jury instructions which govern this proceeding.

12           Furthermore, as I mentioned before,  
13 while not terribly severe, this is a permanent injury  
14 with no indication of a likely prompt resolution.

15           I don't find the absence of medical  
16 reports or physicians' examinations or X-rays or MRIs  
17 to be significant here. This man can certainly  
18 testify that his shoulder didn't bother him before,  
19 that it has bothered him since and the feelings that  
20 occur in the course of endeavoring to use his  
21 shoulder.

22           Just to make a point, however, I do not  
23 find that this conduct, although actionable and  
24 supportive of an award of compensatory damages, was  
25 so egregious or extensive as to support an award for

1 punitive damages under applicable legal standards.

2 Finally, although not every item of  
3 evidence has been discussed in this opinion/report,  
4 all evidence presented to the Special Master was  
5 reviewed and considered.

6 I find that the injury inflicted here  
7 is actionable. I find that the injury was acute  
8 initially and has remained permanent. Although  
9 without continuing pain, there necessarily is  
10 recurring pain and there are restrictions and  
11 disconcerting sequelae of the click in his shoulder  
12 on a regular basis here.

13 Accordingly, I recommend in this report  
14 that the district court enter an award of  
15 compensatory damages in the amount of seven thousand  
16 five hundred dollars in Mr. Brown's favor.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XT0857

Date: September 18, 2008

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